Indiana Hospital, Inc., a Wholly Owned Subsidiary of Indiana Health Care Corporation *and* International Union of Operating Engineers, Local 95-95A, AFL–CIO. Case 36–CA–24965

January 8, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On December 1, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6–RC–10615. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On December 28, 1992, the General Counsel filed a Motion for Summary Judgment. On December 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the bases of its objections to the election in the representation proceeding and the Board's unit determination.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation with an office and place of business in Indiana, Pennsylvania, has been engaged as a health care institution in the operation of an acute care hospital providing in-patient and out-patient medical and professional services for the public. During the 12-month period ending September 30, 1992, the Respondent, in conducting its business operations, derived gross revenues in excess of $250,000 and during the same period purchased and received at its Indiana, Pennsylvania facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held about September 19, 1991,[1] the Union was certified on September 30, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time skilled maintenance employees, including biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead groundskeeper, parts room clerk and engineering and maintenance department secretary employed by the Employer at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

[1] On September 26, 1991, the Respondent filed timely objections to conduct affecting the results of the election. After an investigation, on October 31, 1991, the Regional Director issued a Supplemental Decision on objections recommending that all of the Respondent's objections be overruled. The Respondent filed a request for review. On March 20, 1992, the Board issued an order remanding the case for hearing on Objections II,A and B and denying the request for review in all other respects. A hearing was held on April 9, 1992, and a hearing officer's report issued on April 30, 1992, recommending that the Respondent's Objection II,A and B be overruled. On May 27, 1992, the Respondent filed exceptions and brief in support of exceptions to the hearing officer's report on objections to election. On September 30, 1992, the Board issued a Decision and Certification of Representative adopting the hearing officer's findings and recommendations and certifying the Union.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about October 14, 1992, the Union has requested the Respondent to bargain and, since about October 14, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 14, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Indiana Hospital, Inc., a Wholly Owned Subsidiary of Indiana Health Care Corporation, Indiana, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 95-95A, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time skilled maintenance employees, including biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead groundskeeper, parts room clerk and engineering and maintenance department secretary employed by the Employer at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Post at its facility in Indiana, Pennsylvania, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 95-95A, AFL–CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time skilled maintenance employees, including biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead groundskeeper, parts room clerk and engineering and maintenance department secretary employed by the Employer at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

INDIANA HOSPITAL, INC., A WHOLLY OWNED SUBSIDIARY OF INDIANA HEALTH CARE CORPORATION